

SUMMER 2007

CERTIORARI

Journal of Consumer Advocacy



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certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

WEBSITE

Frasierlaw Website Refreshed

Frasierlaw.com – the Frasier, Frasier & Hickman LLP website – has been updated with a new look and new features.

Frasierlaw.com includes an archive of the Certiorari newsletter, the FF&H Workers' Compensation Guide, and information about Union Plus Legal Services.

“We refreshed our website because we know that more and more of our clients and friends are using the Internet. This is an easy and convenient way for them to keep up with the latest news at Frasier, Frasier & Hickman,” said Frank Frasier, who oversaw the project.

Check out the new Frasierlaw website at www.frasierlaw.com.

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CONSUMER INFORMATION FOR THE CLIENTS AND
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

CASE FILE

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Family of Deceased Worker Receives Congressional Assist

The Workers' Compensation claim of a Tulsa man who died in an industrial accident received help recently from Congressional questions about workplace safety.

Eleazar Torres-Gomes was found dead March 6 inside an industrial laundry dryer at the Cintas Corp. facility in Tulsa.

Torres-Gomes, 46, had worked at the plant since 2000. Police said he was working alone in an area where clothes are washed in an automated system. Another employee discovered him in the dryer about 20 minutes after it had started. He was pronounced dead at the scene and the Occupational Health and Safety Administration (OSHA) began an investigation of the incident.

Days after the Tulsa fatality, the House Subcommittee on Workforce Protections asked OSHA to conduct a nationwide investigation into safety hazards at industrial laundries owned by Cintas.

On behalf of Torres Gomes' surviving family, Frasier, Frasier & Hickman LLP filed a Workers' Compensation claim for death benefits. But, although it was clear Torres Gomes had died on the job, Cintas chose to deny benefits.

Because of the Congressional interest in the accident, one of Torres Gomes' adult sons was invited to meet with Sen. Ted Kennedy (D-Mass) and other congresspersons in Washington, D.C., after the announcement of a proposal to strengthen OSHA.

The Protecting America's Workers Act will would expand and strengthen the Occupational Safety and Health Act passed in 1971.

It amends the OSHA workplace safety law by covering more workers, increasing penalties, strengthening protections, enhancing public accountability, and clarifying an employer's duty to provide safety equipment.

Ironically, Cintas suddenly changed course and agreed to the claim for benefits to Torres Gomes' estate.

"It was a simple claim," said Frank Frasier. "There was never any question Mr. Torres Gomes died while on the job. But this is the kind of attitude we see in many companies - particularly ones with questionable safety records.

"Fortunately, some of our Congressmen and Senators care. And in this case, it made a difference."

CASE FILE

Retiree Rights Protected in Insurance

As employees of Hale-Halsell Company reached retirement age, each was given \$50,000 of paid-up universal life insurance. The retiring employee would choose his beneficiaries.

When Hale-Haslell needed operating money, it mortgaged the insurance policies, 59 in all, to a bank in Missouri. When Hale-Halsell did not pay its debt to the bank, the bank cashed the policies in and took the money.

All of this was unbeknownst to the retirees, until Hale-Halsell took bankruptcy. A lawsuit was instituted to protect the retirees from the loss of their insurance money.

The bank claimed that it had a mortgage in the money from the policies; the retirees claimed that the money was trust funds under the Employee Retirement Income Security Act – also known as ERISA.

ERISA is a Nixon-era act that was meant to protect employees, but has become during the Bush era a protection for large corporations. Notwithstanding how the law has been gutted, the Frasier firm, along with others, was able to protect the policy value in the insurance and, recently \$10,000 was paid to each retiree out of the bankruptcy.

Other issues remain in the Hale-Halsell bankruptcy, including payment of vacation pay and medical bills. The claim by former employees under the WARN Act that the company closed down without giving the required 60 days' notice will have to be decided on appeal. But, in the meantime, the issues over the insurance benefit are resolved.

"We were happy to be able to retrieve the trust funds protected by federal law, notwithstanding the bankruptcy," said Steve Hickman, who represents both former employees and retirees.



Hickman

Frasier, Frasier & Hickman LLP is a leading participant in Union Plus Legal Services. For more information, click: www.frasierlaw.com.

UPDATE

No Crash-No Burn

The Certiorari newsletter has reported numerous court cases involving fatalities and serious injuries resulting from defective automobiles.

For more information about the Victim's Committee for the Recall of Defective Vehicles Foundation, click www.NoCrash-NoBurn.com.

Now, the stories of many of the victims and their families are chronicled on the World Wide Web at a site sponsored by the Victim's Committee for Recall of Defective Vehicles Foundation. The site – www.NoCrash-NoBurn.com – is funded by a grant from the Civil Justice Foundation.

B.J. Kincade founded the Victim's Committee for the Recall of Defective Vehicles Foundation after a long personal journey that began after her son was killed in 1989, when his General Motors CK pickup truck burst into flames during a side-impact collision. After Kincade learned that GM knew its infamous "side-saddle" fuel tank design was vulnerable to rupture during a collision, she took on the giant automakers and the Washington, D.C. policymakers that allow defective vehicles to stay on the road.

NoCrash-NoBurn.com is dedicated to informing the public of known vehicle defects that pose a substantial risk to American motorists.

Kincade states that the site is constantly under construction as more tragedies occur and new information is added.

FIRM

Jamie Keeter Borland joins firm

Attorney Jamie Keeter Borland has joined Frasier, Frasier & Hickman LLP. She will handle personal injury, juvenile, and family law matters.

Borland is a graduate of the University of Oklahoma College of Law. During her studies there, she founded the Family Law Society and clerked for Senior U.S. District Court Judge James O. Ellison.

She has been in private practice for several years.

Borland is a member of the Oklahoma Trial Lawyers Association and the American Trial Lawyers Association.



Borland



Governor Brad Henry recently vetoed a controversial tort reform bill passed by the Legislature this spring. But another assault on Oklahoma's Civil Justice System is already in the works.

Although the governor said Senate Bill 507 went too far, he also said he would continue to pursue so-called "tort reform" legislation that the business community so desperately wants.

A host of business-related interests – from the State Chamber of Commerce to the Wall Street Journal – roundly criticized Governor Henry for protecting the interests of every day Oklahomans. And with a Republican majority in the state House and a 24-24 tie in the state Senate, more so-called "tort reform" legislation is already being prepared so it can be introduced as soon as lawmakers reconvene next February.

Supporters in SB 507 hailed it as "impressive reform." But state Attorney General Drew Edmondson said his analysis of the complex legislation showed it would tie the state's hands in pursuing public-interest lawsuits such as the litigation against tobacco companies and poultry producers. Edmondson went so far as to say the proposed law probably was unconstitutional.

SB 507 included most of the tricks and traps that "tort reformers" want to make it harder to bring accountability to acts of negligence and indifference that harm people, making it more difficult to bring successful lawsuits and placing caps on awards for pain and suffering.

Never mind that the state Supreme Court reports that medical malpractice lawsuits are down dramatically – conflicting with the claims of "tort reformers." An array of "third party" groups has been formed up to join with the state Chamber and Oklahoma Republican Party and

“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

**Franklin D. Roosevelt
January 20, 1937**

give the appearance of a wider front of support for limiting access to the courts for common folk. These groups sound innocent but are not. They include Oklahoma Alliance of Physicians for Tort Reform, Oklahomans for Lawsuit Reform Inc., Americans for Prosperity, and American Justice Partnership.

Think about what "tort reform" really means to you and your family. Do you want your ability to bring a lawsuit diminished or curtailed, if you or a member of your family is injured? Do you want you or your relatives to be compensated for pain and suffering, if the circumstances warrant? Do you want to be able to bring expert witnesses into the courtroom – just like the big corporations?

Think about these things. And during the Legislative interim, find time to discuss lawsuit "reform" with your Legislators.

—Jim Frasier

CASE FILE

Company Wrongfully Uses Medical Excuse to Terminate Worker

Kenneth Shavers just wanted a better job. The single dad learned of an employment opportunity with excellent benefits at I.C. Corporation.

Shavers applied for the job, through Key Temporary Personnel which I.C. Corporation engaged to screen prospective employees. In August 2004, after several months as a temporary employee, he began the process of becoming a permanent employee at I.C.

After written aptitude tests, he was offered a job subject to the results of a physical exam by the company's doctor. Nerve conduction studies on Shavers' wrists apparently revealed very mild symptoms of Carpal Tunnel Syndrome.

The test results caused Shavers to have many questions.

However, he was terminated and escorted off the company's premises that same day.

Shavers had not suffered any symptoms associated with Carpal Tunnel Syndrome. After the test results, he filed a Workers' Compensation Claim. The company now contacted Shavers again with an offer of a permanent job – an offer he declined because it involved the overnight shift and would not be conducive to raising his children.

However, the job offer brought a disturbing question. If the company was offering Shavers a job, why was he terminated?

After an investigation of Shavers' case, Frasier, Frasier, & Hickman LLP filed a wrongful termination lawsuit against I.C. Corporation. The case was finally settled out of court.